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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and capacity-building measures received by the Government of Libya

Summary

The present report, submitted pursuant to resolution 31/27 of the Human Rights Council, was prepared in cooperation with the United Nations Support Mission in Libya. It describes the situation of human rights in Libya and sets out the support provided to key Libyan institutions with regard to the protection of civilians, groups in focus, administration of justice, the rule of law and transitional justice. It concludes with recommendations addressed to all parties to the conflict, the Government, the international community and the Human Rights Council.

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I. Introduction

1. On 27 March 2015, the Human Rights Council adopted its resolution 28/30, in which it requested the United Nations High Commissioner for Human Rights to dispatch a mission to investigate violations and abuses of international human rights law committed in Libya since the beginning of 2014. The report on the investigation was issued on 15 February 2016 (A/HRC/31/47).

2. The Council subsequently adopted its resolution 31/27, in which it requested the High Commissioner to present a written report to the Council, including on the effectiveness of technical assistance and capacity-building measures received by the Government of Libya, and an assessment of further technical support or assistance needed to implement the resolution and the recommendations contained in the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the investigation by the Office on Libya to address the situation of human rights in Libya.

3. The present report was prepared in cooperation with the United Nations Support Mission in Libya (UNSMIL). OHCHR continues to provide support to the human rights mandate of UNSMIL. The Director of the UNSMIL Human Rights, Transitional Justice and Rule of Law Division represents the High Commissioner in Libya.

II. Context

4. Following the deterioration in the security and political situation in 2014, the Libyan Political Agreement was signed and a Presidency Council headed by Prime Minister Serraj was established on 17 December 2015. Under the Agreement, the Presidency Council was tasked with forming a Government of National Accord, to be endorsed by the House of Representatives elected in 2014. In its resolution 2259 (2015), the Security Council endorsed the Agreement and the Government of National Accord as the internationally recognized Government of Libya and called for official contact with parallel institutions outside the framework of the Agreement to be ended. Various actors in Libya, including powerful armed groups, opposed the Agreement and by the end of 2016 the House of Representatives had not endorsed the Government of National Accord proposed by the Presidency Council. In March 2016, the Presidency Council moved to Tripoli and, in response to the continuing legislative vacuum, delegated ministerial responsibilities to a caretaker Government headed by Prime Minister Serraj. However, the Presidency Council remained unable to take full control of governmental functions or implement many of the provisions of the Agreement, including its security, human rights, transitional justice and rule of law provisions. Armed groups across the country remained the most powerful actors on the ground, contributing to insecurity and abuses of human rights. The economic situation and the provision of public services deteriorated, with frequent power cuts and cash shortages, while common crimes and acts of political violence appeared to increase.

5. The elected Constitution Drafting Assembly finalized a draft constitution in April 2016. An ongoing dispute over whether the Assembly adopted the draft with a sufficient number of votes has hindered progress towards its approval by way of a national referendum.

6. Throughout 2016, Operation Dignity forces (consisting of Libyan National Army forces and other armed groups led by General Khalifa Haftar) continued to fight against the Benghazi Revolutionaries Shura Council and groups pledging allegiance to the Islamic State in Iraq and the Levant (ISIL) in Benghazi, reducing the territory controlled by the

Shura Council. Operation Dignity forces also encircled Derna, controlling entry and exit from the city.

7. In May 2016, forces loyal to the Presidency Council, supported by airstrikes conducted by the United States of America, began operations targeting groups pledging allegiance to ISIL in Sirte. It is estimated that more than 650 fighters from the forces loyal to the Presidency Council were killed; ISIL casualties are unknown. By December, the loyalist forces had gained control over Sirte.

8. In September, the Libyan National Army seized control of the eastern oil crescent, including Ras Lanuf, Al-Sidra and Zueitina, from the Petroleum Facilities Guards armed group. Libyan National Army forces also increased their presence in southern Libya. Those developments raised concerns of a possible outbreak of conflict between armed groups loyal to General Haftar in the east and Misratan armed groups in the west who support the Presidency Council.

9. In mid-October, the former "Government of National Salvation", which had controlled Tripoli prior to the entry of the Presidency Council in March, with the support of armed groups, took control of the Rixos hotel complex building in Tripoli, expelling the High State Council, a consultative body provided for by the Political Agreement, from its headquarters.

10. Hundreds of armed groups continue to operate throughout Libya, many nominally affiliated with the Ministries of Defence, Interior and Justice. They receive salaries from central State funds, but are not under the command and control of the State. They exercise effective control in localized areas, including over detention centres where thousands of people are detained. Action to remove law enforcement powers from armed groups, as foreseen in the Libyan Political Agreement, and demobilization, disarmament and reintegration have not yet begun.

11. OHCHR, through the UNSMIL Human Rights, Transitional Justice and Rule of Law Division, continues to monitor and report on the human rights situation in Libya. UNSMIL/OHCHR engages in regular dialogue with the authorities, armed groups, civil society and other relevant actors in Libya. The impact and effectiveness of technical assistance is limited by restricted access to Libya and the prevailing impunity, creating an environment of intimidation and fear, inhibiting interlocutors, including officials, civil society and victims, from sharing information and engaging on human rights. The lack of formal government counterparts, including a Minister of Justice, further limits cooperation.

12. Libya is State party to 11 core human rights treaties, including the International Covenant on Civil and Political Rights and its first Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families; and the Convention on the Rights of the Child and its Optional Protocols. It is also a party to the African Charter on Human and Peoples' Rights.

13. Libya is obliged to respect, protect, promote and fulfil the human rights of all persons within its territory and subject to its jurisdiction, without discrimination. That includes the obligation to ensure a prompt, adequate and effective remedy to those whose rights have been violated, including the provision of reparations and guarantees of non-recurrence, and to investigate and bring to justice perpetrators of gross violations.

14. International humanitarian law also applies to the non-international armed conflict which is continuing in Libya. Libya is a party to the four Geneva Conventions of 1949 and

Additional Protocols I and II. Of particular relevance are common article 3 to the Geneva Conventions and Additional Protocol II, which both apply to non-international armed conflicts and contain protections applicable to civilians and other persons not taking a direct part in hostilities, as well as applicable norms of customary international humanitarian law.

III. Protection of civilians

A. Indiscriminate attacks and other violations of international humanitarian law

15. Under international humanitarian law, civilians and civilian objects are protected from being the object of an attack. Parties to a conflict are under an obligation to target only military objectives. Direct attacks on civilians and indiscriminate attacks, which do not distinguish between civilians and fighters, are prohibited. Attacks that are expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects excessive to an anticipated concrete and direct military advantage are also prohibited. Attacks in breach of those standards amount to war crimes that can be prosecuted by the International Criminal Court, which has jurisdiction over crimes committed in Libya since 2011. Under the Libyan Political Agreement, all armed factions are committed to complying with Libyan legislation and international humanitarian and human rights law.

16. In the current context in Libya, it is often difficult to establish whether any particular attack was indiscriminate and which party was responsible. However, the available information indicates a pattern of attacks using imprecise weapons in heavily populated or residential areas, which together may amount to indiscriminate attacks. Weapons that are imprecise or that have wide-area effects, may be unsuited for targeting military objectives located in densely populated areas. Mines, booby-traps and explosive remnants of war are also indiscriminate by nature.

17. In 2016, attacks in populated areas with imprecise weapons continued to cause civilian casualties across Libya, including in Benghazi, Derna, Sirte, Sokna and Tripoli. From 1 January to 31 October, UNSMIL/OHCHR documented 498 civilian casualties, including 212 killed and 286 injured. Victims included 121 men killed and 151 injured, 31 women killed and 28 injured, 43 children killed and 51 injured, and 73 other victims whose sex and/or age is unknown. The leading causes of death were airstrikes, gunfire and shelling. The largest number of civilian deaths documented were in Benghazi.

18. Incidents documented included attacks on children in recreational areas, on camps for internally displaced persons and on peaceful protesters. On 15 June, the Libyan National Army/Libyan Air Force carried out an airstrike, which hit a children's playground in Derna, injuring three children. On 20 September, unidentified aircraft carried out an airstrike that hit a water park near Sokna in Jufra, killing six women and a child and injuring three others. On 14 October, the Benghazi Revolutionaries Shura Council shelled a playground in the Benina neighbourhood, injuring five boys. On 9 January, unidentified groups shelled the Al-Fallah camp for internally displaced persons from Tawergha, killing two women and one man, and injuring eight others, including one child. On 16 October, shelling of the same camp led to the death of one woman and the injury of three women and three children. On 6 May, a peaceful protest in Al-Kish square, Benghazi, was shelled, killing 4 men, 2 women, 1 child and 1 unidentified person, and injuring at least 32 others. This attack followed two similar incidents in 2015, where peaceful protesters were shelled, killing at least 12 civilians, including 3 children.

19. Civilian objects, in particular hospitals, were also attacked. From 1 January to 28 October, UNSMIL/OHCHR documented seven attacks on medical facilities, including the

bombing of a hospital in Derna in February in which 2 people were killed; the shelling of the Benghazi Medical Centre in May and June; and a car bomb attack on the Al-Jala' hospital in Benghazi on 24 June, in which 5 people were killed and 13 injured, including 2 children. Other attacks on hospitals were recorded in Zawiya and Sabha.

20. Since the outbreak of the conflict between the Benghazi Defence Brigade armed group and Operation Dignity forces in June 2016, a number of mass graves have been discovered in Ajdabiya. In July, 17 bodies were discovered in the Ajli Daya neighbourhood; a mass grave with 29 bodies was discovered in the Al-Magron area; and 10 bodies were reportedly found in the Al-Karasa neighbourhood.

21. Civilians remain trapped in the Ganfouda neighbourhood of Benghazi, facing bombing and shortages of food, water and medical care. UNSMIL/OHCHR documented the deaths of 32 civilians in Ganfouda in August and October from airstrikes. Those trapped include migrant workers and former prisoners from the Buhdeima military prison in Benghazi, who were taken by the Benghazi Revolutionaries Shura Council in 2014, and reportedly other individuals earlier abducted by the Shura Council. Despite mediation efforts supported by UNSMIL, by late October the Shura Council and the Libyan National Army had not reached an agreement on the modalities for evacuation of civilians.

B. Violations of the right to life, including unlawful killings

22. International human rights law prohibits the arbitrary deprivation of life and requires the State to protect the right to life.[1] The State is responsible for violations committed by non-State actors operating in support of or as agents of State authorities. Governments shall ensure strict control, including a clear chain of command, over all officials responsible for apprehension and detention.[2] Under international humanitarian law it is unlawful to kill civilians and any persons not taking an active part in hostilities. It is prohibited to kill members of armed forces who surrender, or are otherwise hors de combat (e.g. captured or wounded fighters no longer able to fight).[3]

23. UNSMIL/OHCHR has found that armed groups, including some operating nominally under State institutions, were responsible for the killing of civilians and detainees in violation of the right to life and of international humanitarian law.

24. In 2016, UNSMIL/OHCHR received reports of unlawful killings carried out by armed groups from all sides. On 9 June, the bodies of 12 men associated with the former Qadhafi regime were found with gunshot wounds in different locations in Tripoli. All 12 were prisoners from the Al-Ruwaimi prison in Tripoli, whose release had just been ordered by the Office of the General Prosecutor. The Al-Ruwaimi prison is controlled by an armed group, the Ruwaimi Brigade, under the nominal oversight of the Judicial Police. The circumstances surrounding the killings remain unclear, including whether the prisoners had been released before their deaths. The Office of the General Prosecutor stated that it had opened an investigation, but has yet to announce its findings.

25. On 21 July, the bodies of 14 people were found in a rubbish dump in the Al-Leithi neighbourhood of Benghazi and on 29 October, 10 bodies were found in another rubbish dump in the Al-Sheibna neighbourhood. Both neighbourhoods are controlled by forces aligned to Operation Dignity. Reports indicate that the bodies had their limbs bound,

[1] See, for example, the International Covenant on Civil and Political Rights, art. 6 (1).

[2] See the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 2.

[3] See common article 3 and Additional Protocol II, art. 4 (2) (a) to the Geneva Conventions.

showed signs of torture and had been shot, many in the head. Unidentified armed groups, apparently aligned to Operation Dignity, had reportedly abducted at least five of the victims. The office of the Ministry of Interior in Benghazi reportedly opened an investigation into the July killings, but has not made public any findings.

26. UNSMIL/OHCHR has received information on abductions and killings of adults and children by armed groups or gangs of common criminals. For example, in western Libya on 24 February, the body of an 11-year-old boy with marks of torture and a wire around his neck was found in the Sayad area of Tripoli. His abductors had taken him 68 days earlier while he was on his way to school and demanded a ransom from his family. On 30 June, the Central Security Forces/Abu Salim group in Tripoli reportedly abducted a young man. His body was found in the street on 16 July, showing signs of severe beating and bruising. On 4 November, a 4-year-old girl was found dead in the Al-Ma'mura neighbourhood in Warshafana. An armed group had abducted her 15 days earlier. Her body was found in an abandoned farm with injuries to her head and neck, following the lack of a ransom payment.

27. In eastern Libya, armed groups aligned to Operation Dignity took a man from his home in Benghazi on 6 April. His body was found on 26 May with signs of torture, including a broken hand, and gunshot wounds. In a similar case, a man was detained in February 2016 and held for two months in a detention centre run by an armed group aligned to Operation Dignity in Tukra. He was released, but subsequently abducted from the street in Ajdabiya on 29 April. His body was found on 30 April with signs of torture, including cigarette burns, and gunshot wounds.

28. In southern Libya, on 25 July, unidentified gunmen abducted two officials from the civil registry office in Murzuq. On 27 July, their bodies were found in the street in Sabha.

29. Assassinations were also reported. On 10 May, unknown gunmen killed a media activist in Sabha in a drive-by shooting. On 16 March, a human rights defender was assassinated in a car bomb attack in downtown Derna.

30. UNSMIL/OHCHR has also documented executions of prisoners. In January, groups pledging allegiance to ISIL reportedly beheaded six prisoners; three from the Petroleum Facilities Guards group and three local officials in Sirte. The groups also executed a policeman in January, whom they had captured three months earlier, and hung his body on a pole in Harawa for 72 hours. They also executed five male prisoners in Sirte in March and three male nurses in July, who had provided medical support to the Libyan National Army.

31. On 20 March, the Derna Mujahedin Shura Council carried out eight executions of alleged members of ISIL. Armed groups from Warshafana abducted and then executed six men in March. In June, the Central Security Force group reportedly publicly executed two men accused of unknown crimes in Ganer Benghahir.

32. UNSMIL/OHCHR received information that in early June, Al-Bunyan al-Marsous forces executed a man who was suspected of being a member of ISIL in Sirte, shortly after he surrendered himself. On 21 September, video footage circulating on social media appeared to show ill-treatment by Al-Bunyan al-Marsous forces of a man accused of being a member of ISIL. This was followed by allegations that he was then executed.

33. UNSMIL/OHCHR has regularly supported victims and their families, providing advice and intervening with government officials and armed groups at all levels through meetings, letters and public statements. UNSMIL has issued a regular monthly report on civilian casualties in Libya. It has also supported civil society to work on protection cases, through direct cooperation and capacity-building and carried out regular briefings with the international community. It has also supported a local mediation effort with both the Libyan National Army and the Benghazi Revolutionaries Shura Council to seek a ceasefire and

agreement for the evacuation of all civilians, as well as wounded combatants, from Garnfouda, Benghazi.

34. UNSMIL/OHCHR refers individual cases of concern, where possible, to the appropriate organizations. It regularly receives requests for medical care for civilian victims of indiscriminate attacks and victims of human rights violations and abuses, and seeks accessible programmes that could provide the nature and level of support needed.

IV. Groups in focus

A. Women

35. While Libya has ratified the Convention on the Elimination of All Forms of Discrimination against Women and other international instruments that prohibit discrimination on the basis of sex, significant discrimination against women in both law and practice continues to have a serious impact on the rights of women in Libya. Following intimidation and attacks in 2014 and 2015, several women activists were forced to leave the country or adopt a low profile. In 2016, UNSMIL/OHCHR received continuing reports of women activists in exile receiving threats. On 25 September, an armed group that operates in Al-Fernaj, Tripoli, abducted and tortured a blogger, accusing him of being "liberal" and writing in support of women's rights on the Internet. Relatives are now unable to locate him.

36. Women in detention and migrant women are particularly vulnerable to sexual abuse and other forms of violence. Women held in detention centres run by armed groups across the country are commonly guarded by men, who have full access to their cells. According to credible information received by UNSMIL/OHCHR, migrant women who travel through Libya using smuggling routes and those who are in official and unofficial migrant detention centres are targeted for rape. Migrant women who had been detained described how they were taken away by armed men from cells shared with others and repeatedly raped over a number of days.

37. Women migrants held by groups pledging allegiance to ISIL were "handed over" to individual fighters and repeatedly raped. If they sought to resist they were beaten and tied up. Those that tried to escape were also beaten and denied food and/or water for up to two days.

38. Libyan women face discrimination in matters such as travel restrictions, as a result of armed groups requiring them to travel with a male guardian in some areas, and do not have the right to pass on their nationality to their children or spouse. Civil society groups have lobbied for the draft constitution to address these issues. On 8 September, the Presidency Council established a women's support and empowerment unit, pursuant to the Political Agreement.

B. Children

39. Libya has ratified the Convention on the Rights of the Child and its optional protocols. The Convention requires States to protect and ensure the care of children affected by armed conflict. As described in section III above, children have been killed during hostilities by heavy weapons used in residential areas, crossfire, explosive remnants of war and mines.

40. UNSMIL/OHCHR continued to receive reports of the abduction of children in 2016. Four children from the Shershari family, who were abducted on 2 December 2015 by

unknown assailants in Surman, remain missing. Other children have been abducted and killed, as outlined in section III above.

41. The ongoing violence has led to the destruction and damage of schools, the displacement of schoolchildren, and a lack of school books. According to the Ministry of Education, 558 out of 4,200 schools in Libya are not functioning, affecting 279,000 school-aged children.

42. Child health has also been affected, with the conflict leading to a breakdown in the provision of medical services. On 5 May, it was reported that 12 infants had died from preventable bacterial infection in the Sabha Medical Centre neonatal intensive care unit, while 1 child died and 3 others were admitted to the intensive care unit in the Tripoli Medical Centre after being given expired medication.

C. Migrants[a]

43. While Libya is a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, its legislation and practice are not in line with international and regional standards for migrants, including refugees and asylum seekers. Libya criminalizes irregular migration and has no asylum determination system.

44. UNSMIL/OHCHR has found that migrants in Libya face a host of violations and abuses, both in and outside detention.[b] Perpetrators include State officials, armed groups and individuals. The State has not been able to ensure effective protection for migrants in Libya.

45. Migrants in Libya are highly vulnerable, facing arbitrary detention in inhuman conditions; torture, including sexual violence; abduction for ransom; extortion; forced labour; and killings. Those held in official detention centres run by the Department for Combating Illegal Migration under the Ministry of the Interior are held arbitrarily, with no judicial process, in violation of Libyan law and international human rights standards. Armed groups, smugglers and traffickers hold others in unofficial places of detention. Sub-Saharan Africans are especially vulnerable to abuse as a result of racial discrimination. Migrant women are also at particular risk of rape and other forms of sexual violence.

46. UNSMIL/OHCHR has documented inhuman conditions in detention centres managed by the Department for Combating Illegal Migration. Detainees are often held in warehouses with appalling sanitary conditions, little space to lie down and extremely limited access to light, ventilation or washing facilities. It has received reports of guards denying access to toilets, forcing migrants to urinate and defecate within the overcrowded warehouses in which they are kept. In some centres, migrants suffer from severe malnutrition, receiving on average around one third of the minimum daily intake of calories required by adult men, leading to or contributing to deaths. It has also received numerous and consistent reports of torture, including beatings and sexual violence, and the forced labour of detainees.

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[a] OHCHR defines an "international migrant" as "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence". See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, 2014, p. 4.

[b] See UNSMIL/OHCHR, "'Detained and disbarmoured' Report on human rights abuses against migrants in Libya", 13 December 2016.

47. On 1 April, 4 migrants were killed in Al-Nasr detention facility in Al-Zawiya and approximately 20 injured following an apparent escape attempt. One guard was injured. Médecins sans Frontières said that on 17 August unidentified armed men attacked its boat that rescues migrants in international waters, shooting at the bridge and boarding the boat. The Libyan Coast Guard acknowledged encountering the boat, but claimed that they only shot in the air and denied boarding it. On 21 October, a man from a speedboat with "Libyan Coast Guard" written on it reportedly attacked a rubber boat carrying 150 migrants, 14 nautical miles out to sea, causing it to collapse and the migrants to fall into the sea. After the attack, a non-governmental organization, Sea-Watch, was able to rescue 120 persons and recovered 4 bodies. A further 26 persons are presumed dead. Reportedly, Libyan naval forces in Tripoli denied the attack, but admitted an encounter with Sea-Watch on the same day, claiming that it was in Libyan waters.

D. Media professionals, activists and human rights defenders

48. Media professionals, activists and human rights defenders do not enjoy freedom of expression in Libya. They face a range of abuses, including abductions and murder, or summary executions. Armed groups are the main perpetrators. The State has been unable to provide effective protection.

49. Media professionals, activists and human rights defenders continued to be targeted for speaking out on human rights issues or criticizing armed groups. On 28 March, armed groups aligned to Operation Dignity detained two bloggers and held them in the Grenada detention facility in Benghazi. The bloggers were denied access to a lawyer and family visits. They were released after four months. On 30 March, a blogger and journalist was taken by armed groups in Tripoli and questioned regarding his social media posts. While detained, he said that he was beaten with a stick and attacked by a dog. He was released on 3 April.

50. On 3 April, armed groups supportive of the Government of National Accord used heavy weapons to attack the building in Tripoli of the Al-Naba television channel, which was aligned to the General National Congress, in an apparent attempt to stop it broadcasting. The building was badly damaged. Armed groups subsequently entered the building and intimidated the staff.

51. Journalists and media professionals who work in conflict zones also face danger. On 2 July and 2 October respectively, snipers from groups pledging allegiance to ISIL in Sirte killed Abdelkader Fassouk, a Libyan journalist, and Jeroen Oerlemans, a Dutch journalist. On 23 June, a sniper in the Al-Qawarsha neighbourhood in Benghazi, allegedly linked to the Benghazi Revolutionaries Shura Council, killed Libyan journalist Khaled Showiref Al-Zentani.

52. Human rights defenders also faced danger in their work. On 16 March, Abdul Basit Abu-Dahab, was killed in a car bomb attack in downtown Derna. He had advocated for many years for the rule of law and human rights in Libya. He had received numerous death threats for his work and survived two previous assassination attempts in 2013 and 2014.

53. While article 26 (6) of the Libyan Political Agreement commits parties to support the proper functioning of the National Council for Civil Liberties and Human Rights, the country's national human rights institution has remained largely non-operational. In 2014 and 2015, its staff and board members were subjected to threats and forced to close their offices in Tripoli. Some fled the country. The term of the Council elapsed in late 2014 and has not been renewed by the House of Representatives, as is required by law. The former legislature, the General National Congress appointed a parallel institution in March 2015.

Support

54. UNSMIL/OHCHR has worked to directly support victims by intervening with the Government and other counterparts on individual cases and issues of concern and regularly briefing the international community. It has also analysed by-laws issued by the Civil Society Commission, the authority that oversees the operation of international non-governmental organizations, and briefed Libyan officials and the international community on the lack of compliance of the by-laws with international human rights standards.

55. UNSMIL/OHCHR has regularly issued public statements on groups in focus, including on the assassination of Abdul Basit Abu-Dahab in March; the killings of four migrants from the Al-Nasr detention facility in April; and the establishment of a women's support and empowerment unit by the Presidency Council in September. On World Press Freedom Day, UNSMIL issued a video and statement in support of journalists in Libya. It has organized or supported workshops for civil society, jointly with the Cairo Institute for Human Rights Studies, the Heinrich Böll Foundation, Tunisian and Libyan organizations and United Nations partners. It also supported a workshop for the Department for Combating Illegal Migration on international standards that relate to migration and asylum.

56. It has been observed that essential support is usually lacking for the protection of media professionals, activists and human rights defenders, including financial support for persons at risk to leave and remain outside Libya until it is safe to return. Ongoing capacity-building for human rights defenders, particularly for women defenders, also remains a relevant need.

V. Administration of justice

A. Overview

57. International human rights law obliges States to ensure that any person whose rights are violated has access to an available, prompt and effective remedy. That is usually achieved through an appropriate legal framework and a functioning justice system. In Libya, the existing legal framework needs to be reviewed, to bring it into line with international human rights standards. However, in the current unstable environment, serious efforts at law reform are not possible. The justice system has faced ongoing attacks that have severely limited its functioning. From June 2012 to July 2016, UNSMIL/OHCHR documented 37 cases of attacks on judges and prosecutors. Political pressures at the local and regional level also impact the impartiality of the judiciary.

58. The inability of the justice system to function effectively has led to widespread impunity, particularly for abuses by armed groups. Despite the daily abuses, UNSMIL/OHCHR is unaware of any prosecution of armed group members or State officials for crimes related to abuses committed since 2011. On a positive note, despite the political divide and the fragmentation of State institutions, key bodies such as the Supreme Court, the High Judicial Council, the Prosecutor General and the Judicial Police (the prison service) remain united.

B. The constitution

59. The elected Constitution Drafting Assembly met in March and April to finalize the draft constitution. On 23 March, the High Commissioner wrote to the members of the Assembly to urge them to strengthen the human rights provisions in the draft, in line with international standards. He emphasized the need to prohibit discrimination, including

against women; ensure the protection of refugees against refoulement; and include references to the prohibition on torture; fair trial guarantees; abolition of or restrictions on the use of the death penalty; and guarantees of freedom of religion, belief, opinion and expression. While not in full compliance with international human rights standards, the April draft included some improvements in the areas of discrimination against women, the prohibition on torture, freedom of association and freedom from servitude, slavery and human trafficking.

60. A dispute over whether the Assembly adopted the draft with a sufficient number of votes is impeding next steps towards approval in a national referendum. UNSMIL continues to reach out to those who are boycotting the Assembly to facilitate agreement on a draft constitution.

C. Libyan Political Agreement

61. There has been little progress in implementing the administration of justice and rule of law provisions of the Libyan Political Agreement. Implementation would address many concerns regarding impunity and abuses committed by armed groups. The Agreement requires that armed groups release or hand over to the judicial authorities persons held in custody without a legal basis; that judicial authorities bring those persons before the judiciary or release them; and that the competent judicial authorities provide effective protection. The Agreement also provides for the judicial authorities to be given exclusive power to hold detainees and prisoners and for the authority to arrest and detain to be strictly limited to statutory law enforcement bodies.[6] The Presidency Council is yet to make progress on implementation of these provisions. On a related issue, on 9 May the Presidency Council issued a decision to establish a presidential guard, a military and police force with the task of securing the Presidency Council and public facilities. It appointed a commander for the presidential guard in August.

D. Arbitrary detention, deprivation of liberty, torture and other ill-treatment

62. International human rights law prohibits arbitrary arrest or detention.[7] Detention is arbitrary if it is not in accordance with national law, or is otherwise inappropriate, unjust, unreasonable, or unnecessary in the circumstances.[8] A detained person has a range of due process rights, including the right to be brought before a judicial authority and to a trial within a reasonable period or release.[9] In April, the United Nations Working Group on Arbitrary Detention adopted two opinions, finding in one case that a 65-year-old woman

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[6] See articles 26 (2), (3) and (4) and 44.

[7] See the International Covenant on Civil and Political Rights, art. 9 (1) and Human Rights Committee, general comment No. 35 (2014) on liberty and security of person. See also the procedural safeguards for persons in detention under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173.

[8] The circumstances in which the United Nations Working Group on Arbitrary Detention considers that deprivation of liberty is arbitrary is set out in OHCHR fact sheet No. 26, section IV B. The Human Rights Committee clarified that the meaning of the term "arbitrary" must be interpreted "broadly to include elements of inappropriateness, injustice and lack of predictability" in communication No. 305/1998, *Hugo van Alphen v. Netherlands*, Views adopted by the Human Rights Committee on 23 July 1990, para. 5.8.

[9] See the International Covenant on Civil and Political Rights, art. 9 (3). Article 9 outlines other due process rights that relate to arrest and detention.

and her son had been arbitrarily detained for almost a year and in a second case that 12 former Qadhafi officials had been arbitrarily detained, some for periods of more than four years.[10] International human rights law contains an absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment.[11]

63. UNSMIL/OHCHR has found that arbitrary detention, deprivation of liberty, torture and other ill-treatment are widespread in Libya.[12] Victims include those who are targeted for their identity or opinion, as well as migrants. Perpetrators are primarily armed groups, some of whom act on behalf of the State, and State officials.

64. The use of armed groups to carry out State law enforcement functions has compounded the problems of impunity. Since 2012, armed groups have been nominally integrated into various State structures, including the Ministries of Defence, the Interior and Justice, while in practice maintaining their own command and control structure. Under this arrangement, the State continues to pay their salaries, while the armed groups carry out law enforcement functions, such as arrests and running detention centres, with little or no official oversight or control.

65. It is estimated that there are between 6,000 and 8,000 detainees and prisoners in Ministry of Justice prisons.[13] Over 90 per cent are in pretrial detention, often detained for years with no prospect of going to trial. They include conflict-related detainees, a significant number of whom have been in detention since 2011. It is unknown how many detainees are held in detention centres run by the Ministry of Defence, the Ministry of the Interior and armed groups.

66. UNSMIL/OHCHR regularly receives information on arbitrary detentions and deprivation of liberty in Libya. Armed groups continue to detain individuals, often based on their political opinion, tribal or other affiliations, or simply to exchange them for other detainees. Typically, those held are detained with no judicial process and sometimes despite release orders by the public prosecution. Detainees are often subjected to torture or other ill-treatment and sometimes coerced into giving confessions. At times, confessions are publicly broadcast on television. Torture includes beating, shooting, cigarette burns, electrocution, suspending detainees upside down and enclosing them in small, suffocating spaces. Detainees can be held arbitrarily for years.

67. Owing to concerns for the safety of detainees and their relatives, UNSMIL/OHCHR is often unable to release publicly information regarding the cases that it documents. In 2016, it received consistently disturbing information regarding brutal patterns of torture, other ill-treatment and inhuman prison conditions in a number of prison facilities, including in Gernada and Kuweifiya prisons in Benghazi; the Al-Jawiya and Tomina prisons in Misrata; and the Abu Salim, Fursan Janzur, Al-Hadhba, Mitiga and Military Intelligence detention facilities and prisons in Tripoli. From May to July 2016, UNSMIL/OHCHR documented six deaths in custody as a result of torture or ill-treatment in detention centres in Tripoli and Misrata. It also received reports that a prison official in Al-Hadhba, was continuing to work in the prison, despite being shown on video footage to have been involved in torturing Al-Sa'di Qadhafi, a son of Muammar Qadhafi.

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[10] Working Group on Arbitrary Detention, opinions No. 3/2016 and No. 4/2016.

[11] See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, art. 7.

[12] In the present report, the term "detention" is intended to reflect deprivation of liberty by both State officials and armed groups, given that armed groups remain in control of many facilities and that many armed groups were nominally brought under the purview of government ministries after 2011.

[13] Information provided to UNSMIL at a meeting with officials from the Ministry of Justice on 16 November 2016.

68. UNSMIL/OHCHR visited Mitiga and Sabha detention centres in May and July 2016 and observed dire conditions. An armed group, the Special Deterrence Force, runs Mitiga detention centre. Its representatives said that the facility was holding approximately 1,700 people, of whom only 91 had been sentenced by a court. There were 200 women and 120 children being held. Detainees were held in severely overcrowded conditions, lacking ventilation and light. Women were guarded by male prison guards. Little progress was made on an agreement to allow the Office of the Prosecutor General to screen cases in Mitiga to determine the legality of detention and either send detainees for trial or release them.

69. It is estimated that between 4,000 and 7,000 migrants are held arbitrarily in detention centres run by the Department for Combating Illegal Migration. Numbers fluctuate and there is no registration system to record the movement of migrants in and out of detention. Armed groups, individuals and security forces bring migrants to detention centres with no legal process. There is no judicial review or other oversight mechanism. Various armed groups can gain access to detention centres to bring or remove migrants.

70. As described in the present report, conditions in migration detention centres are inhuman. Migrants are also held illegally in irregular detention centres managed by armed groups and so-called "connection houses" run by armed groups, smugglers and traffickers. Connection houses hold migrants for short periods, prior to their being transferred onto smuggling and trafficking routes.

Support

71. UNSMIL/OHCHR provided technical advice in early 2016 to the Constitution Drafting Assembly, including during a three-week workshop held in Oman.

72. UNSMIL/OHCHR has also supported workshops on the judiciary, prison management and international human rights mechanisms for Libyan officials and other counterparts, in cooperation with the International Commission of Jurists, the United States Institute of Peace and Lawyers for Justice in Libya. Between May and November, it also carried out 11 visits to places of detention in Tripoli, Misrata and Sabha. It provided advice to the Judicial Police and armed groups in Tripoli on the process of moving detainees from unofficial places of detention to official Judicial Police detention and to the Presidency Council regarding appropriate vetting procedures for establishing the presidential guard. It has also worked on the implementation of the United Nations human rights due diligence policy on United Nations support to non-United Nations security forces.

73. UNSMIL/OHCHR has advocated for the Presidency Council to appoint a focal point on justice issues, in the absence of an acting Minister of Justice. Implementation of the justice and rule of law provisions of the Libyan Political Agreement are also important, including through disarmament, demobilization and reintegration. Further efforts are needed on vetting and discipline systems for newly established security forces. There should be full implementation of the United Nations human rights due diligence policy, including appropriate mitigation measures, by the United Nations in Libya. The international community will also need to screen recipients of technical assistance and capacity-building programmes.

VI. Transitional justice

74. Despite the provisions of article 26 (5) of the Libyan Political Agreement, which commit parties to the implementation of Law No. 29 of 2013 on transitional justice, progress has been limited. The fact-finding and reconciliation commission provided for by the Law has not been established, nor has its Board been appointed. The victims'

compensation fund, also foreseen by the Law, has not been established. The provision requiring those still detained in relation to the 2011 conflict to be charged or released has also not been implemented.

75. Case 630/2012, in which 37 men associated with the Qadhafi regime faced charges related to the suppression of the "17 February revolution", is under review by the cassation chamber of the Supreme Court. The verdict of the Tripoli Court of Assize on 28 July 2015 convicted and sentenced to death by firing squad nine defendants, including Muammar Qadhafi's son, Saif al-Islam Qadhafi; former intelligence chief, Abdullah al-Senussi; and former Prime Minister, Al-Baghdadi al-Mahmudi. Other defendants received prison terms, while four were acquitted, and another was referred to a mental institution. There is no time limit set under the law for the cassation chamber to issue its decision.

76. While the trial represented the most prominent effort by the Libyan judiciary to bring former regime officials to account for their crimes, including gross human rights violations, it raised serious concerns with regard to the right to be informed promptly and in detail of charges; the right to a public trial; the right to be represented by counsel; the right to adequate time and facilities to prepare a defence; the right to call and examine witnesses; the right to be tried in one's presence; and the right not to be compelled to confess guilt or incriminate oneself. UNSMIL/OHCHR is engaging with the Prosecutor General's Office with a view to identifying what is needed for reform of the law and practice.

77. In its resolution 1970 (2011), the Security Council referred the situation of Libya since 15 February 2011 to the Prosecutor of the International Criminal Court. That gives the Court jurisdiction over crimes committed in Libya since 2011.[14] In November 2016, the Prosecutor briefed the Security Council and called for Libya to comply with its obligation to surrender Saif al-Islam Qadhafi to the court.[15] She noted that her Office was closely following Abdallah Al-Senussi's case and that in 2017 she intended to make the situation in Libya a priority and hoped to have new arrest warrants served.

78. On 31 August 2016, representatives of Misrata and Tawergha signed an agreement outlining a programme of compensation for victims of the 2011 conflict and the return of some 40,000 displaced Tawerghans. In order to come into force, the agreement requires endorsement by the Misrata and Tawergha municipal councils and the Government. UNSMIL/OHCHR staff worked closely with the two sides during a mediation process lasting 18 months. It advocated for the implementation of the agreement to be in full conformity with international human rights law, in particular ensuring that the right to return and compensation be pursued in parallel and not made conditional on one another.

Support

79. UNSMIL/OHCHR continued a dialogue with the Office of the Prosecutor General and other officials on issues regarding fair trial, criminal law reform, torture and ill-treatment. It called upon the international community to provide additional resources to allow the Office of the Prosecutor of the International Criminal Court to extend its investigations to crimes allegedly committed after 2011. It also advocated with the Government and other relevant counterparts to surrender Saif al-Islam Qadhafi to the Court pursuant to the request of the Court.

[14] See the ninth report of the Prosecutor of the International Criminal Court to the Security Council pursuant to resolution 1970 (2011) of 12 May 2015.

[15] See the twelfth report of the Prosecutor of the Court to the Security Council pursuant to resolution 1970 (2011) of 9 November 2016.

80. Throughout 2016, UNSMIL/OHCHR continued to support the Misrata/Tawergha dialogue committee, which met seven times between March and August in Tunis in implementation of a road map agreed on 18 December 2015, to reach the agreement signed on 31 August on compensation and returns. It also supported an expert meeting on reconciliation from 31 August to 2 September, which included a discussion on transitional justice in Libya.

VII. Conclusions and recommendations

81. The findings of the present report are consistent with those described in previous reports of the High Commissioner on Libya, including the report of the OHCHR investigation on Libya issued in February 2016 (A/HRC/31/47). The recommendations in that report, including those describing the further assistance needed to address the human rights situation in Libya, remain relevant. The present report seeks to highlight those recommendations that are considered most urgent, including in terms of further assistance needed, to ensure progress in the protection of human rights in Libya.

82. The findings of the present report demonstrate that armed groups, some of whom act on behalf of the State, are primarily responsible for grave violations and abuses of human rights in Libya. They hinder the effectiveness of support and impede the implementation of the reforms needed to ensure compliance with human rights standards and the re-establishment of the rule of law. It is therefore critical that the Government moves towards the establishment of a professional army and police and other security forces; prioritizes disarmament, demobilization and reintegration programmes; and implements the justice and rule of law provisions of the Libyan Political Agreement, including through the receipt of focused assistance in the areas described below.

83. The Human Rights Council also has an important role to play in complementing and strengthening efforts towards ensuring accountability in Libya.

84. Recognizing the urgent need to bring an end to the widespread human rights violations and abuses being committed in Libya, the High Commissioner appeals to all parties to the conflict to cease hostilities and support the Government of National Accord, to move towards a State based on respect for human rights and the rule of law.

85. Accordingly, the High Commissioner recommends that all parties to the conflict:

(a) Desist immediately from all violations of international human rights law and international humanitarian law and abuses of human rights, including those amounting to crimes under international law;

(b) Declare that such acts will not be tolerated and remove those suspected of such acts from active duty, pending investigation.

86. The High Commissioner recommends that the Government of Libya:

(a) Address urgently the proliferation of armed groups, including through disarmament, demobilization and reintegration, and the building of national security forces under the command and control of the State;

(b) Institute a comprehensive vetting programme compliant with standards of due process to remove and prevent the recruitment into the State security forces of individuals about whom there are reasonable grounds to believe they have been

involved in violations of international human rights law or international humanitarian law, or abuses of human rights;

(c) Address the situation of detainees, whether foreign or Libyan nationals, including by ensuring that the State is in control of all detention facilities and that cases are screened with a view to detainees being released or charged and judged in a trial affording all procedural guarantees, in accordance with Libyan law and international standards;

(d) Ensure access to legal counsel and courts for detainees and their families to seek legal review. Monitoring organizations should be permitted regular, unhindered and without-notice access to all places of detention;

(e) Ensure the proper treatment of foreign or Libyan nationals in detention or deprived of liberty, including by eliminating torture and other ill-treatment, including sexual violence. Access to medical treatment and sufficient food and water must be ensured;

(f) Address urgently the situation of migrants to ensure that all individuals, regardless of their status, are able to enjoy their human rights, including by decriminalizing irregular migration, adopting an effective refugee status determination procedure and implementing alternatives to detention;

(g) Ensure protection for the judiciary and its independence;

(h) Extend full cooperation to and support for the International Criminal Court by assisting its investigations and complying with its rulings;

(i) Facilitate a voluntary, safe and dignified return of persons who are currently internally displaced, including the Tawerghan community;

(j) Appoint a focal point on justice issues.

87. **The High Commissioner recommends that the international community:**

(a) Provide the Office of the Prosecutor of the International Criminal Court with the resources necessary to investigate and prosecute the alleged crimes under international law committed in Libya since 2011;

(b) Prioritize support for the demobilization, disarmament and reintegration of members of armed groups, to be conducted in compliance with international human rights standards;

(c) Apply a due diligence framework to programmes that support the security forces and stringent screening procedures to recipients of technical assistance;

(d) Ensure protection of and practical assistance to Libyan human rights defenders, including by facilitating emergency visas, temporary shelter and relocation where necessary, and consider the establishment of a fund to support human rights defenders at risk;

(e) Consider establishing a programme of medical support to victims of human rights abuses and violations;

(f) Ensure respect for the principle of non-refoulement and provide protection, in accordance with international law, for those with a well-founded fear of persecution;

(g) Ensure that any cooperation with the Government of Libya, including in relation to migration, is compliant with international human rights standards.

88. **The High Commissioner recommends that the Human Rights Council remains seized of the progress made towards accountability and the situation of human rights in Libya.**